

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

Case No. 11-20129-6

6 -v-

Case No. 11-20066-2

7 PAUL ANTHONY DARRAH,

8 Defendant.

9 DETENTION HEARING

10 BEFORE MAGISTRATE JUDGE R. STEVEN WHALEN
11 United States Magistrate Judge
12 Theodore Levin United States Courthouse
13 231 West Lafayette Boulevard
14 Detroit, Michigan
15 July 23, 2012

16 APPEARANCES:

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1 Detroit, Michigan

2 July 23, 2012

3 2:16 p.m.

4 * * *

5 THE CLERK: The Court calls criminal matter 11-20129,
6 Defendant No. 6. United States of America vs. Paul Darrah.

7 Now, are we talking about two case numbers also?

8 MR. STRAUS: Yes, we are, your Honor. But however, I
9 believe Mr. Darrah has -- we have completed his arraignment.
10 Is that correct?

11 MS. MACERONI: That's correct. Patricia Maceroni on
12 behalf of Mr. Darrah. Your Honor, last week we did complete
13 arraignment on both of the indictments.

14 THE COURT: Okay.

15 THE CLERK: So we're here just on this --

16 MS. MACERONI: Detention hearing.

17 THE CLERK: For both matters or just this one matter?

18 MR. STRAUS: Both.

19 THE COURT: I'm just trying to think if there would be
20 a situation where he's detained in one or released on the
21 other. I guess I can't -- it's an all-or-nothing situation.

22 MR. STRAUS: Yeah. I thought about that myself, your
23 Honor. My sense is that the detention order would trump the
24 release order.

25 THE COURT: In any event, Mr. Straus, first of all,

1 are we ready to go forward with a detention hearing?

2 MS. MACERONI: Yes, your Honor.

3 MR. STRAUS: The Government is ready, your Honor.

4 THE COURT: And are we going by proffer or by live
5 testimony?

6 MR. STRAUS: Written proffer, your Honor.

7 THE COURT: Is that okay, Ms. Maceroni?

8 MS. MACERONI: No objection, Judge.

9 THE COURT: Go ahead.

10 MR. STRAUS: Your Honor, I don't know if the Court has
11 received a copy of the Government's written proffer that was
12 filed on July 16th.

13 THE COURT: I did, and I have read that.

14 MR. STRAUS: And you have had an opportunity to read
15 that?

16 THE COURT: I did.

17 MR. STRAUS: Your Honor, I won't, I won't belabor the
18 point. I will, I guess, for purposes of the record, just
19 simply kind of use that as an outline. This is the Court's
20 first dealing with this case in terms of the detention hearing.
21 Needless to say, the Government, in its proffer, has -- by the
22 way, this is a presumption case.

23 Mr. Darrah, as the Court is aware, is charged in two
24 indictments. The first indictment charges him in multiple
25 counts involving a conspiracy to obstruct justice. That would

1 be in connection with a trial held in 19 -- 2006 before the
2 Honorable Lawrence P. Zatkoff. He's also charged in criminal
3 No. 11-20129. Most notably, he is a RICO defendant and he is
4 charged in Count 3, among other counts, with meth distributing
5 -- meth distribution conspiracy.

6 As the Court can see Mr. Darrah, and I will say this,
7 looks are deceiving. The Government is moving for detention
8 based on risk of flight, danger to the community.

9 As indicated in our proffer, Mr. Darrah is the
10 national vice president of a violent organized crime group,
11 that is the Devils Diciples Motorcycle Club, which is the
12 charged enterprise in the RICO indictment. He has been in a
13 period -- he has been in a position leadership for some time.
14 He has been the national vice president for over ten years.
15 He's actively participated in the Devils Diciples' criminal
16 activities for an extended period of time. And he's personally
17 supervised virtually all of the Devils Diciples motorcycle
18 criminal activities, that being second-in-charge.

19 During the course of those conspiracies, the Devils
20 Diciples has distributed a massive amount of methamphetamine,
21 hydrocodone, other drugs. He's also overseen a pattern of
22 violence, witness intimidation and obstruction of justice,
23 specifically that which is charged in 11-20066.

24 During the time frame that he has been with the club,
25 the Devils Diciples have shot and killed three people in two

1 separate incidents, shot and wounded two people in two separate
2 incidents, savagely assaulted four people and left them for
3 dead in the desert, severely beat disabled man, that was just
4 in January, and broke his jaw in two places.

5 THE COURT: Let me ask you a question, stop you for a
6 minute --

7 MR. STRAUS: Yes, your Honor.

8 THE COURT: -- and ask you some questions about that.
9 I know that one or the other defendants is alleged to have been
10 directly involved in the situation with the, with the disabled
11 person. But in terms of these other situations, the killings
12 and whatnot, what is Mr. Darrah's connection to that?

13 MR. STRAUS: Well, not only has he been a member of
14 the very club that routinely commits these acts of violence,
15 your Honor, he's been in a leadership role for the last ten
16 years. And during that last ten-year period, several incidents
17 which are charged in the indictment have occurred, most
18 particularly methamphetamine distribution; that's a ten-year
19 mandatory minimum offense.

20 During 2009, this would be after Mr. Darrah's
21 tracheotomy operation and presumably in the same physical
22 condition that he is in today, the Government was up on a Title
23 III for about seven months. During that period of time, as the
24 Court can see as indicated in the written proffer, you can see
25 that Mr. Darrah, consistent with his leadership role, directed

1 others to commit acts of violence, in one particular incident,
2 against a gentleman named Danny Burby, who likewise was a
3 member of the club. And that's detailed at pages 8 and 9 of
4 the written proffer. There are some other discussions during
5 that Title III.

6 THE COURT: Did Burby in fact get assaulted?

7 MR. STRAUS: He was in fact assaulted, your Honor.
8 And so, in other words, Mr. Darrah's directives to his minions
9 were indeed carried out. I note he doesn't have much of a
10 criminal record. However, he is charged with a number of
11 different charges:

12 The conspiracy to violate RICO; conspiracy to
13 distribute 5 grams or more of methamphetamine; distribution of
14 methamphetamine; using a facility in interstate commerce to
15 further an unlawful activity; conspiracy to obstruct justice by
16 witness tampering -- that's a separate incident from the Judge
17 Zatkoff case -- and assault in aid of racketeering.

18 And in the other indictment, he's charged in Counts 1,
19 2 and 3, which respectfully charge conspiracy to suborn perjury
20 and obstruct justice. I will note that in that indictment, the
21 Court may -- will note that at least one, perhaps two witnesses
22 were threatened. In fact, the female witness was threatened
23 that if she were not -- if she not to falsely claim ownership
24 of a firearm, that the Devils Diciples -- certain Devils
25 Diciples would take her daughter, hook her on drugs, and

1 essentially make her a prostitute.

2 THE COURT: Was it Mr. Darrah that made the threat?

3 MR. STRAUS: No, but he was the leader of that
4 conspiracy, your Honor. As mentioned, he's facing a ten-year
5 mandatory minimum.

6 In terms of a possible look at the sentencing,
7 sentencing guidelines, I'm just reading here, I see a base
8 offense level for methamphetamine track -- trafficking of 38.
9 He would likely receive at least a two-level enhancement for
10 role in the offense, two-level enhancement for obstruction of
11 justice. Preliminarily, it looks like Darrah is looking -- Mr.
12 Darrah is looking at a recommended sentence of 360 months to
13 life.

14 As such, and in combination with, and I, and I sense
15 that Ms. Maceroni will note some physical issues, but I think
16 they cut the other way, I think Mr. Darrah, facing that
17 sentence, has every, has every incentive to leave. Any
18 sentence may very well be a life sentence. And to the extent
19 he is released, he can certainly return to his capacity in
20 directing the activities of others, engaging in violent acts
21 and other acts consistent with what they are charged with, that
22 is, obstruction of justice and witness tampering in this
23 particular case.

24 Consequently, the Government believes that there are
25 no conditions or combination of conditions that will assure his

1 further appearance, and no combination of conditions that will
2 assure the safety of the community, particularly witnesses in
3 this case and the very justice system that we operate under
4 here in the Eastern District of Michigan.

5 THE COURT: Ms. Maceroni?

6 MS. MACERONI: Thank you.

7 Initially, Judge, and I've already tendered a copy of
8 these to Mr. Straus, I have two exhibits that I would like to
9 submit on Mr. Darrah's behalf. The first one is from his
10 primary care physicians at Oakland Primary Care. His second is
11 a status letter from the ENT physician, Dr. Brandes, who
12 performed the tracheotomy.

13 Before I get into his medical condition, though, I
14 want to say a few things following Mr. Straus's remarks. First
15 of all, I don't believe that there's any evidence, with all due
16 respect to Mr. Straus, that there's any risk of flight here on
17 behalf of Mr. Darrah. I think --

18 THE COURT: I have to tell you, I'm more concerned
19 about the danger to the community.

20 MS. MACERONI: Okay.

21 THE COURT: So if you want to focus your comments on
22 that.

23 MS. MACERONI: I will. The last specific thing quoted
24 or cited in the written proffer that was filed occurred in
25 2008. There has been nothing in writing or any allegation that

1 Mr. Darrah has done anything specifically since 2008 concerning
2 the Devils Diciples.

3 You know, there's a lot of talk back and forth about,
4 well, he's still in a leadership role, he's still this, he's
5 still that. There's been nothing brought forward of any recent
6 allegations whatsoever of him directing any type of criminal
7 activity. The obstruction case that was in front of Judge
8 Zatkoff occurred in 2006, so that's even longer than that.

9 As far as his danger to the community, Judge, now I
10 would like to dovetail into his medical history. Quite
11 frankly, his medical history has continually deteriorated since
12 he received his tracheotomy a few years ago.

13 Looking at Exhibit No. 1, the first page is a status
14 letter from his doctor, Dr. Defauw. But before we get into
15 that, I'd like to direct the Court to page 2 of 6 where it
16 indicates that the primary basis for Mr. Darrah's physical
17 problems are a gene mutation, which is a coagulation gene
18 mutation, which necessitates him being on substantial and
19 lifelong doses of coumadin. The coumadin allows the blood to
20 thin out. As a result of this gene mutation, he has had three
21 heart attacks and several strokes, the latest being in 2011.
22 The coumadin has got to be monitored. And now I'll go back to
23 the first page of the report, the blood work monitored so the
24 dosage of his coumadin is correct.

25 Since he's been in the Wayne County Jail in the last

1 ten days, Judge, they keep fluctuating with his coumadin
2 medication level. Some days they give him five doses --

3 THE COURT: How long has he been in the Wayne County
4 jail?

5 MS. MACERONI: I'm sorry?

6 THE COURT: How long has he been in the Wayne County
7 Jail?

8 MS. MACERONI: Twelve days, since he was arrested
9 on -- when were they arrested? July?

10 MR. STRAUS: July 13th, your Honor.

11 THE COURT: So what are you saying, he's getting the,
12 he's getting coumadin, but --

13 MS. MACERONI: He's not getting it regularly. Also,
14 they keep fluctuating with his coumadin levels. Some days
15 he'll get five pills, some days he'll get six pills, which
16 according to his physician, is the worst thing they can do with
17 the coumadin level.

18 Secondly, Judge, on page 1 of 6, there's a list of 17
19 medications that he's currently on. If you subtract the pieces
20 of, like a footwear that he needs and the special inserts that
21 he needs because of his diabetic condition, we're looking at 14
22 medications that he has to take on a daily basis. He's getting
23 five in the Wayne County Jail.

24 Currently, he's got insulin-dependent diabetes, which
25 sometimes they give him the shot in the morning, sometimes it's

1 in the afternoon. Again, there's no consistent course of
2 treatment. He has a liver hemangioma, which necessitates drug
3 treatment. He's not getting care for that whatsoever. And
4 then most obviously, Judge, is the tracheotomy, which he got in
5 2007 as a result of the complications of some of these other
6 diseases that he has.

7 The main thing with the tracheotomy is the fact that
8 he needs to keep the trach clean, not only the hole that's
9 going into his chest, but all of the apparatus that surrounds
10 the tracheotomy, the tubes, the collar around his neck, the
11 insert that's inside of his neck. And his doctor, and that's
12 Exhibit No. 2 that I gave you, specifies that he needs specific
13 care that has to be cleaned daily with peroxide, suctioned
14 daily with a sterile suction tube. And the tracheotomy tube
15 itself, forget all the other stuff with the oxygen, has to be
16 changed because these things deteriorate.

17 Since he's been incarcerated, they haven't given him
18 any peroxide. On one day, they gave him a saline solution to,
19 to swipe out the tracheotomy and the tubing. He hasn't gotten
20 any new tubing in the 13 days that he's been in, or the ten
21 days that he has been in.

22 At home, he has specific sterile packages that have
23 the peroxide, that have everything that he needs to make sure
24 that he's not getting any type of infection in the machines --
25 or in the trach. He does that twice a day. He hasn't gotten

1 one sterile type of cleaning kit at any point in time since
2 he's been incarcerated.

3 Both Dr. Brandes and his treating physician at Oakland
4 Primary Care stress the fact that this hole in his neck is a
5 direct conduit to his lungs and his chest and his upper
6 respiratory system, and any infection that gets in will
7 directly attack the lungs. You know, so it's a critical part
8 of his care.

9 I just don't believe that there's not a set of
10 restrictions or requirements that this Court can't fashion to
11 make sure that he's getting the type of treatment that he needs
12 outside with his doctors, which include weekly blood
13 monitoring. I mean, the doctor said that if there -- the
14 coumadin levels go up and down, he should have two blood draws
15 a week.

16 He was last seen at Oakland Primary Care on July 10th,
17 and the coumadin levels were suspicious and they ran another
18 blood draw. I haven't seen the results of those blood tests
19 yet, neither has Mr. Darrah. And if the coumadin is stable,
20 then he has to go back once a month. This is a constant
21 critical set of care that needs to be done to make sure that he
22 remains in good health.

23 Additionally, Judge, I would like to put into evidence
24 Pretrial Services' report which indicates that an unsecured
25 bond would be fine. I mean, we're talking about a gentleman

1 whose last criminal offense was a misdemeanor in 1997 for the
2 possession of marijuana. He's had no violent history
3 whatsoever. He's a lifelong resident of this district. He has
4 a 13-year-old --

5 THE COURT: It does say there were threats that were
6 apparently picked up on Title III --

7 MS. MACERONI: I'm sorry?

8 THE COURT: There were threats that were picked up on
9 Title III wiretaps.

10 MS. MACERONI: People --

11 THE COURT: Back in 2008 and I think 2009.

12 MS. MACERONI: Sure. Sure. Just by way of example,
13 Eric Smith, Macomb County Prosecutor, was picked up on a
14 voicemail message machine threatening the gentleman who's
15 running against his brother in a county commissioner race. I
16 mean people say --

17 THE COURT: If Eric Smith is in front of me, then I'll
18 deal with him.

19 MS. MACERONI: People say stupid things on the phone,
20 you know, honestly.

21 THE COURT: Let me ask you a question. Let's assume
22 that your client, or any individual, could be deemed a
23 dangerous individual, could be deemed dangerous to other people
24 if he were released, but that individual also has very serious
25 medical problems. Is that -- is the, the lack of treatment or

1 the inadequacy of treatment enough of a reason to grant bond to
2 somebody that would otherwise be considered a danger?

3 MS. MACERONI: I believe so.

4 THE COURT: Or is the remedy -- I mean, anybody that's
5 incarcerated has a due process right to medical treatment.

6 MS. MACERONI: But it's the quality of that medical
7 treatment, Judge.

8 THE COURT: But I mean, does the fact that he gets
9 medical treatment on the outside address the question of
10 whether there are conditions that could ensure that he's not
11 going to be a danger to another person?

12 MS. MACERONI: I believe there are certain conditions
13 that this Court could impose so that if --

14 THE COURT: Give me an example.

15 MS. MACERONI: Well, he can't, he can't talk on the
16 phone. I mean, these allegations that have been placed forward
17 in the proffer indicate that he's somehow directing all of this
18 stuff using a phone. Take away the phone. Put him on an
19 electronic tether so that they know he's under house arrest,
20 other than when he has to go to his doctor's appointments.
21 There's certainly, in today's day and age, enough surveillance
22 equipment and enough type of electronic monitoring, GPS, you
23 know, whatever the Court feels is, is good enough that will
24 monitor where he is and what he's doing 24 hours a day. And
25 he's more than amenable to that.

1 He's the sole care provider for his 13-year-old son.
2 Again, he's got strong family support in the community. Four
3 of his nieces are in the courtroom today and are willing to do
4 whatever this Court directs to make sure he does as well.

5 THE COURT: Where -- where does he live? Who does he
6 live with?

7 MS. MACERONI: He lives in Macomb Township. He lives
8 with his son, Jack. He also lives with --

9 THE COURT: Jack is the 13-year-old?

10 MS. MACERONI: The 13-year-old. And he lives with
11 Jennifer Cicola, who is also named in the indictment. She's
12 defendant number -- she's at the end of the list. And they've
13 been together for 17 years. They've got a common law marriage,
14 and they are the parents of Jack. So, but he's been, he's been
15 at that Macomb Township address since 2009 when I was initially
16 appointed to represent him when the criminal complaint was
17 first brought forth.

18 MR. STRAUS: Your Honor, if I can just --

19 THE COURT: Yeah, please.

20 MR. STRAUS: I appreciate the medical conditions that
21 Mr. Darrah has, but when we look at his past history, it
22 apparently didn't stop him from committing criminal behavior.
23 He's had this trach operation for some time. And post-trach
24 operation, he was able to direct others to carry out, indeed
25 did carry out an assault on Danny Burby.

1 The stakes are very high in this case. It strikes me
2 that these sympathy factors do not diminish the risk of flight
3 or the danger to the community considering that he is, he is
4 not a strong-arm person. He is a leader and he directs others.

5 In terms of the risk of flight, it strikes me that if
6 they are as significant as they sound to be, although I am not
7 a physician, one might conclude that upon release, he should,
8 he should be the first one to get out of Dodge, because any
9 sentence imposed in a case of this magnitude with the evidence
10 that he is facing will be a life sentence. And there is really
11 no reason whatsoever for him to stick around.

12 MS. MACERONI: Judge, can I respond to that?

13 THE COURT: Well, hang on. Hang on. I'll give you a
14 chance. I mean, I suppose one reason for him to stick around
15 is to continue getting medical treatment. Apparently he's on
16 continuing care.

17 MR. STRAUS: Or to continue helping others thwart the
18 criminal justice system.

19 THE COURT: I understand. Let me ask another
20 question, and I think I'm talking about Mr. Darrah here. I
21 believe that there was a -- well, first of all, the conspiracy
22 in this particular case spans what, 2005 through 2009 I think?

23 MR. STRAUS: Which conspiracy, your Honor?

24 THE COURT: The conspiracy of 20066.

25 MR. STRAUS: Yes, correct.

1 THE COURT: Hang on a second. I want to look at
2 something in the Pretrial Services' report.

3 MR. STRAUS: Your Honor, if I may?

4 THE COURT: One second.

5 MR. STRAUS: Okay.

6 THE COURT: I want to make sure I'm not confusing one
7 defendant with the other. Are these two cases that we're here
8 on today his only Federal -- were there any prior Federal
9 convictions?

10 MS. MACERONI: No.

11 MR. STRAUS: No, your Honor.

12 THE COURT: Okay. Okay. Fine. That answers my
13 question.

14 Go ahead. You had another point you wanted to make?

15 MR. STRAUS: I forgot it.

16 THE COURT: I know how that happens.

17 MR. STRAUS: Your Honor, I appreciate, I appreciate
18 the concern over medical conditions. And I will just say by
19 way of background that of the 41 defendants, the United States
20 did not ask for detention on everyone, notwithstanding their,
21 their membership in the club.

22 Those people that were -- that the Government did move
23 for temporary detention and ultimately full detention, those
24 were carefully chosen based on their backgrounds, either as low
25 level violent persons in their individual capacity, or people

1 such as Mr. Darrah, who have the capacity by way of reputation,
2 his position within the organization to carry out acts of
3 violence through others.

4 THE COURT: One other factual question. The killings
5 that you spoke of and the, the other physical, physically
6 violent actions, those occurred during the course of this
7 conspiracy?

8 MR. STRAUS: That's correct, your Honor.

9 THE COURT: Okay.

10 MR. STRAUS: Most recently would be the, what we have
11 been referring to as the Box Canyon beatings where five members
12 of the Devils Diciples who apparently were on the outs with
13 other members of the Devils Diciples were beaten and left for
14 dead in the desert in Arizona.

15 THE COURT: And when did that happen?

16 MR. STRAUS: I believe that was in 2003, your Honor.

17 THE COURT: Okay.

18 MR. STRAUS: Which would have been within the time
19 period of Mr. Darrah's membership in the DDMC, as well as
20 during a portion of the time he was the leader.

21 MS. MACERONI: Judge, if I can --

22 THE COURT: Did you have another point you wanted to
23 make?

24 MS. MACERONI: Yeah. As to the risk of flight, you
25 know, in 2009 when the complaint was initially filed, Matthew

1 Schneider was the AUSA who was handling the case. And he was
2 adamant in speaking with me. And of course, I relayed this to
3 Mr. Darrah, the indictment is coming down imminently. If your
4 client wants to talk to us, make sure that, you know, he gets
5 in front of this because --

6 THE COURT: Did he appear -- did your client appear in
7 2009 --

8 MS. MACERONI: No.

9 THE COURT: -- on the complaint?

10 MS. MACERONI: The complaint was dismissed.

11 THE COURT: He, he never appeared in that complaint?

12 MS. MACERONI: Never appeared.

13 THE COURT: Okay.

14 MS. MACERONI: It was adjourned a few times, you know,
15 the preliminary exam was adjourned a few times and then
16 everything was ultimately dismissed, with the under --

17 THE COURT: He never did an initial appearance in the
18 complaint?

19 MS. MACERONI: No.

20 THE COURT: Okay.

21 MS. MACERONI: With the under -- you know, I mean, he
22 was contacted --

23 THE DEFENDANT: I was here.

24 MS. MACERONI: Oh, you were here once?

25 THE DEFENDANT: I was here. I was bonded out.

1 MS. MACERONI: He was bonded out. I apologize.

2 That's right, because that's why I got appointed.

3 THE COURT: That was Magistrate Judge Morgan, I think.

4 MS. MACERONI: I'm not -- I can't remember, Judge.

5 THE COURT: But in any event, that complaint was
6 dismissed and when the indictment came down, it was sealed
7 initially, I think.

8 MR. STRAUS: This indictment.

9 THE COURT: This indictment, yea.

10 MR. STRAUS: Both, actually, both indictments.

11 THE COURT: Okay.

12 MR. STRAUS: But that was several years later.

13 THE COURT: Right.

14 MS. MACERONI: Which is my point. I mean, in 2009, he
15 was being told by the Government, you know, we're coming after
16 you. The indictment is imminent, even though there was an
17 understanding that there wasn't going to be much done on the
18 complaint. If he's going to run, that's when he's going to
19 run, when he understands -- when he first knows that he's under
20 the, the supervision of the Government or, you know, the
21 Government believes that he's the leader of this horrible
22 organization. He didn't run then. He didn't run in 2010,
23 2011, and we're more than half way through 2012. His entire
24 family is here. Medically, he can't run. I mean, he wouldn't
25 have the oxygen supply to run.

1 I know these are serious allegations. He certainly
2 understands they are serious allegations. But if he was going
3 to run, he had three and a half years to do it and he didn't.

4 So I don't believe that there's any evidence, quite
5 frankly, of a risk of flight whatsoever, no matter how much
6 time he is looking at. And we're very long away from figuring
7 out the sentencing guidelines in this matter. This is a
8 detention hearing.

9 THE COURT: Okay.

10 MS. MACERONI: So based on everything, based on, you
11 know, the significant risk of infection, and serious
12 complications as a result of his physical infirmities, if the
13 Government is concerned about his access to a telephone, he'll
14 give up any access to a telephone and he will abide by whatever
15 conditions.

16 THE COURT: That's a, that's a real hard condition to
17 enforce.

18 MS. MACERONI: But it's one that he's willing to
19 undergo so that he can get his necessary medical care and spend
20 whatever time he has remaining with his 13-year-old son.

21 THE COURT: Okay. All right. This is a -- this is a
22 tough case, because certainly if you look at the allegations in
23 the indictment involving the whole organization, there's some
24 pretty nasty stuff going on. It's an allegation, I understand,
25 but there's some, the Government pointed out in its memorandum,

1 there's some fairly significant evidence *in toto* involving the
2 organization. Now, the allegation is that Mr. Darrah is the
3 vice president of this organization, so therefore, he has a
4 supervisory role in directing these things.

5 What I'm going to do, and I want to be real clear
6 about what I'm going to do and why I'm going to do it, I am
7 going to grant bond, and I'm going to put some stringent
8 conditions. And I want to be clear, again, why I'm doing this.

9 I am concerned -- well, first of all, let me talk, it
10 is a presumption case. This is an indictment, so obviously
11 it's probable cause. So the presumption is factored in, it is
12 a rebuttable presumption.

13 Now, in terms of the risk of flight, I indicated
14 earlier that I was less concerned about that. And Ms.
15 Maceroni, I think your, your point is well taken that he was
16 aware back in 2009 what was coming down the pike here and what
17 was happening. He didn't flee.

18 Secondly, it's, it's clear that he's got some serious
19 medical, medical conditions that need to be addressed. And
20 he's got incentive to stay here and deal with those, because
21 these are life-threatening situations that require ongoing
22 care, requires medication, requires care for the tracheotomy,
23 et cetera. And I don't think a person that's on the run, so to
24 speak, is going to be able to get that level of care.

25 As far as the possible sentence he might be looking

1 at, you know what? If he gets sentenced, it may end up being a
2 life sentence. But I've mentioned this before in this court.
3 There appears to be, based on studies that have been done, not
4 a real big correlation between the amount of time somebody is
5 looking at and whether they are going to, whether they are
6 going to show up. So there are conditions I could set to
7 assure against the risk of flight.

8 I'm more concerned about the, given the allegations in
9 the complaint, given the statements that Mr. Darrah was heard
10 making on the Title III's, and yeah, I don't think those
11 statements are just blowing smoke. I think that the guy was
12 directing punishment. Okay. Given this -- so that concerns
13 me.

14 Given that, and of course, the, the evidence that he
15 would have directed or been involved in the earlier situations,
16 what you called the Box Canyon incident or the killings is
17 more, at this point, based on what I've heard, more indirect
18 and is more based on his leadership role. But the fact is
19 these, these incidents that directly involve him that concern
20 me were back in 2008 and I think maybe in 2009, and of course,
21 that's when the complaint was filed.

22 Since that time, I don't see that there's been any, at
23 least no evidence of any further activity, either directly, or
24 threatening people, or actually assaulting people.

25 I don't think that Mr. Darrah himself, given his

1 physical condition is personally in a position to go out and do
2 any damage to anybody. I suppose he could still use a gun.
3 But the point is that there's no, there's no, between 2009 --
4 2008, 2009 and now, I don't see any indication. Nonetheless,
5 it does concern me. But there are conditions I could set that
6 would assure, reasonably assure, they are never 100 percent
7 assure of anything, but reasonably assure that he's going to
8 behave himself.

9 And again, I'm not bound by what Magistrate Judge
10 Morgan did back in 2009. And I don't know, obviously, what she
11 was aware of at that time in terms of the activity.

12 MR. STRAUS: She was not aware of a lot of this, your
13 Honor.

14 THE COURT: Yeah. I mean, certainly the Government
15 was aware of what was going on.

16 And then finally, the final sort of piece of puzzle is
17 I do have a recommendation from Pretrial Services that suggests
18 that there are conditions that could be set. In fact, I'm
19 going to set more stringent conditions than are recommended by
20 Pretrial Services. And again, I'm not bound by what Pretrial
21 Services recommend, but I pay attention to it.

22 So, I'm going to set bond at, as the amount as
23 recommended, \$10,000 unsecured, unsecured with the following
24 conditions.

25 Let me say one more thing. And I asked Ms. Maceroni

1 what if someone is really a direct danger, but yet they have
2 this life-threatening medical condition they are not getting
3 treatment for. Is that sufficient in and of itself to get
4 bond? I don't think it is. But it's a factor I am considering
5 in the totality of circumstances, because right now,
6 notwithstanding the strength of the case, Mr. Darrah is
7 presumptively innocent. And obviously he's not getting the
8 complete absence of care in Wayne County Jail. But given this
9 proliferation of medical problems that he has, I'm concerned
10 that he's not going to get adequate care pre-trial in the
11 event.

12 Okay. \$10,000 unsecured with the following
13 conditions:

14 He will report as directed to Pretrial Services;
15 restrict his travel to the Eastern District of Michigan. I'm
16 going to order electronic monitoring, GPS monitoring with a
17 curfew as directed by Pretrial Services. That curfew will
18 allow for medical visits, obviously visits with counsel for
19 purpose of preparing a defense.

20 He's to have no contact with any witnesses, any
21 potential witnesses, or any co-defendants, with the exception
22 of Jennifer Cicola, I think it's pronounced.

23 MR. STRAUS: Cicola.

24 THE COURT: They have a child together, so I'm not
25 going to order that he have no contact with the mother of their

1 child. But that's the only exception. There's to be no
2 contact, and that means no telephone calls, no personal
3 contact, no communication at all, except through your lawyer,
4 as necessary to prepare your defense.

5 You're not to possess any firearms, destructive
6 devices or other dangerous weapons.

7 You are not to possess any illegal drugs. You are not
8 to possess any controlled substances, unless they are
9 prescribed by a licensed medical provider.

10 Submit to drug testing and/or treatment as directed by
11 Pretrial -- well, if it's one time, if it's negative, it will
12 be discontinued. If it's not, further testing or treatment as
13 directed by Pretrial Services.

14 You will reside at the address you've given to
15 Pretrial Services.

16 Does he have a passport?

17 MS. MACERONI: No.

18 THE COURT: Well, you're not to apply or obtain a
19 passport or an enhanced driver's license. Do you have -- does
20 he have an enhanced driver's license?

21 MS. MACERONI: No.

22 THE COURT: Okay. I think that takes care of it. As
23 I said, I've gone a bit beyond what was recommended by Pretrial
24 Services.

25 Mr. Darrah, I want to caution you that if you fail to

1 follow these conditions in any respect, you have a big problem
2 because your bond will be revoked. You will go to Wayne County
3 Jail. And you know what your medical situation is better than
4 I do and what the consequences of that will be.

5 You could also be charged with an additional offense
6 that could get you an additional up to ten years over and above
7 anything you might get on this case. It can be treated as
8 contempt of court. It's just a world of problems that fall on
9 your shoulders if you don't comply with these conditions.

10 Do you have any questions about the conditions?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. If you do, talk to your attorney,
13 talk to the Pretrial Services' officer. But again, it's
14 imperative that you comply with these conditions.

15 Anything else for the record?

16 MR. STRAUS: Yes, your Honor. We appreciate the
17 Court's ruling. The Government will elect to exercise its
18 right to appeal to the district court. I would ask that the
19 Court hold in abeyance Mr. Darrah's release until resolution by
20 the district court.

21 THE COURT: Okay. This is -- who is the district
22 judge in this?

23 MR. STRAUS: Judge Cleland.

24 THE COURT: Judge Cleland. Okay. Is he in the
25 building today? He is in the building today.

1 I'll stay this order until five o'clock p.m., or until
2 further order of Judge Cleland.

3 MR. STRAUS: Thank you, your Honor.

4 THE COURT: Okay. Thank you.

5
6 (Proceedings adjourned at 2:54 p.m.)

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9 **CERTIFICATE OF REPORTER**

10 As an official court reporter for the United States
11 District Court, appointed pursuant to provisions of Title 28,
12 United States Code, Section 753, I do hereby certify that the
13 foregoing is a correct transcript of the proceedings in the
14 above-entitled cause on the date hereinbefore set forth.

15
16
17 s/ Christin E. Russell

18 CHRISTIN E. RUSSELL, FCRR, CRR, RPR, CSR

19 Federal Official Court Reporter
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